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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,980	02/16/2001	Anthony John Bell	5641C1-07-LAV	5253

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/784,980

**Applicant(s)**

BELL ET AL.

**Examiner**

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 and 46-54 is/are pending in the application.
- 4a) Of the above claim(s) 10-27 and 46-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 28-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The Amendment filed August 29, 2005 has been entered. Claims 1-36,46-54 remain pending, with claims 10-27 and 46-54 withdrawn from consideration for being directed to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term "a chemically induced unpleasant mouthfeel" was not described in the specification. However, specification states the unpleasant mouthfeel effects typically found with botanicals include tingling, burning, drying, and astringency. For examination purposes, "a chemically induced unpleasant mouthfeel" is understood to mean tingling, burning, drying, or astringency, as well as terms synonymous with a tingling, burning, drying, or astringency mouthfeel.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1, 2,4-9,28,29,31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katsuragi et al. (EP 0732064 A1) in view of Oravainen et al. (WO 9107100).
6. See the reasons stated in the Office Action mailed April 29,2005.
7. Claims 3 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katsuragi et al. (EP 0732064 A1) in view of Oravainen et al. (WO 9107100) as applied to claims 1, 2,4-9,28,29,31-36 above, in view of Raymont (AU 9671904 A).
8. See the reasons stated in the Office Action mailed April 29,2005.

***Response to Arguments***

9. Applicant's arguments, with respect to the rejection of claims 1, 4-9, 28, and 31-36 under 35 U.S.C. 102(b) as being anticipated by Carpenter et al. (US 5637344) have been fully considered and are persuasive, since Carpenter et al. do not teach that the unpleasant mouthfeel of the cocoa particles is tingling, burning, drying, astringency , or any mouthfeel characteristics synonymous with these terms. The rejection has been withdrawn.
10. Applicant's arguments with respect to the rejections of Claims 1, 2,4-9,28,29,31-36 under 35 U.S.C. 103(a) as being unpatentable over Katsuragi et al. (EP 0732064 A1)

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in view of Oravainen et al. (WO 9107100) and Claims 3 and 30 under 35 U.S.C. 103(a) as being unpatentable over Katsuragi et al. (EP 0732064 A1) in view of Oravainen et al. (WO 9107100) further in view of Raymont (AU 9671904 A), have also been fully considered but they are not persuasive.

11. Applicant asserts that Katsuragi teaches the sole bitterness relieving agent is an ester of a mono/diglyceride with a carboxylic acid or salt, and palm oil is used as a carrier for the composition. However, Katsuragi palm oil *comprising* a dissolved ester of a mono/diglyceride with a carboxylic acid or salt is added to the candy composition to reduce bitterness, such that the ester makes up 0.01-10% of the total candy composition. Because the ester is *dissolved* in the palm oil, Katsuragi teaches adding the palm oil provides an amount effective to relieve bitterness. Oravainen et al. teach it is advantageous to add oil to a hard candy to prevent sticking and provide opacity. Thus, not only does Katsuragi provide motivation for dissolving the ester in oil , obtaining an oil effective to suppress the bitterness: for delivery purposes, but Oravainen et al. provides further motivation to add oil to hard candy: prevent sticking and provide opacity. Therefore, one would have had some expectation of success in dissolving the ester in the oil, and thus obtaining an effective bitterness suppressing oil: oil provides a good carrier for the ester, prevents sticking, and provides opacity. The particular amount of oil added to the candy and the oil to botanical ratio in the candy depend on the amount of ester required to suppress the bitterness and the amount of oil required to dissolve the ester.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 8:00AM-4:30PM M-F.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
Examiner  
Art Unit 1761



RAM

Steve Weinstein  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761  
11/14/05